

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL R. JOHNSON et al.,

Defendants and Appellants.

2d Crim. No. B211906
(Super. Ct. No. BA321756)
(Los Angeles County)

Daniel R. Johnson and Maurice D. Hawkins appeal the judgments following convictions for two counts of home invasion robbery (Pen. Code, §§ 211/212.5, subd. (a)),¹ and one count of attempted home invasion robbery. (§§ 664/211.) The court found true allegations a principal was armed with a firearm (§ 12022, subd. (a)(1)), and the appellants acted in concert and entered a structure. (§ 213, subd. (a)(1)(A).) Both appellants were sentenced to three years, consisting of the three-year low term on robbery, count 1, a concurrent three-year low term on robbery, count 2, and a concurrent 18-month low term on the attempted robbery. The trial court imposed and stayed a one-year term on the firearm enhancement. Appellants contend that the firearm enhancement was improperly stayed and should be stricken. We agree

¹ All statutory references are to the Penal Code.

the firearm enhancement was improperly stayed and will remand to the trial court for resentencing. Otherwise, we affirm.

FACTS

Moments after Shahram Ghashgaei and his parents had come home from work, codefendant Cargile broke into the house through the front door. He was holding a gun in his hand. Appellants followed him into the house. The family was ordered to lie on the floor and one family member was hit in the face. The robbers took cash and car keys from family members and fled. They were apprehended as they fled.

DISCUSSION

Appellants contend the trial court erroneously imposed and stayed the one-year firearm enhancement. (§ 12022, subd. (a)(1).) They argue that we should order the enhancement stricken because that was the trial court's intent. Respondent concedes that the trial court erred but argues that the matter should be remanded to the trial court for resentencing.² We conclude the trial court erred by staying the enhancement, and that the matter should be remanded to the trial court for resentencing.

The section 12022, subdivision (a)(1) firearm enhancement is mandatory by its terms. Unless otherwise provided by statute, a trial court may either impose or strike a mandatory sentence enhancement. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; *People v. Haykel* (2002) 96 Cal.App.4th 146, 151.) A trial court, however, may not stay the enhancement and to do so is an unauthorized sentence. (*Ibid.*) When a trial court exercises its discretion to dismiss or strike the enhancement, the "reasons for the dismissal must be set forth in an order." (§ 1385, subd. (a); *People v. Cattaneo* (1990) 217 Cal.App.3d 1577, 1589.)

These rules are well established and it is clear the trial court erroneously stayed the one-year firearm enhancement. The only dispute on appeal is the proper

² Respondent also argues that appellants forfeited their claim by not objecting to the sentence in the trial court. We reject the forfeiture argument because it does not apply to the imposition of an unauthorized sentence. (*People v. Scott* (1994) 9 Cal.4th 331, 354; *People v. Bradley* (1998) 64 Cal.App.4th 386, 391.)

remedy. Appellants claim the trial court intended to strike the enhancement because the effect of a stay is similar to a dismissal. That view has some support because the trial court imposed the lower term on all the offenses and ordered the sentences to run concurrently. The court may not have wished to impose any additional time for the enhancement.

Nevertheless, it is unclear what the trial court would have done had it realized it could not stay the enhancement. A statement of reasons is required as a condition of striking the enhancement, and the record shows no such statement. (See § 1385; *People v. Cattaneo*, *supra*, 217 Cal.App.3d at p. 1589.) Also, the minute order indicates that the enhancement was stayed pursuant to section 654 and there is no basis in law for such an action.

This court cannot accept the error based on speculation as to what the trial court would have done, or as a matter of convenience. Therefore, to assure an accurate and complete record, we will remand the matter for resentencing on the enhancement.

The order staying the section 12022, subdivision (a)(1) enhancement is reversed. To assure that the sentence is lawful and accurately reflects the intention of the sentencing court, the matter is remanded for resentencing on the enhancement. If the trial court chooses to strike the enhancement, it shall specify its reasons for doing so. The judgments are otherwise affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Barbara R. Johnson, Judge
Superior Court County of Los Angeles

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant Hawkins.

Thomas Owen, under appointment by the Court of Appeal, for Defendant and Appellant Johnson.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Nima Razfar, Deputy Attorney General, for Plaintiff and Respondent.